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# The U.S. Virgin Islands' Growing Technology Sector: Benefits and Requirements Under the University of the Virgin Islands' Research and Technology Park Program

By Marjorie Roberts & Robert Goldsmith

The U.S. Virgin Islands ("USVI"), an unincorporated territory of the United States, offers targeted tax incentives to attract and retain businesses that utilise technology and research, from online marketing to energy trading to global financial research through the University of the Virgin Islands Research and Technology Park Program ("RTPark"). These incentives are administered by the University of the Virgin Islands ("UVI") Research and Technology Park Protected Cell Corporation ("RTPark-PC"), a public corporation and an autonomous instrumentality of the USVI government.

The incentives also extend to the dividends or allocations received by their bona fide resident owners. To qualify for benefits, an applicant must meet the RTPark program requirements and receive income that is eligible for tax incentives under the Internal Revenue Code of 1986, as amended and as applicable to the USVI and the Treasury Regulations promulgated thereunder. We have set out below the Federal framework for the USVI's grant of benefits and then the local requirements and available tax incentives for qualifying businesses.

### **Federal Framework for Benefits**

The Internal Revenue Code of 1986, as amended, serves as the tax code in the USVI through use of a substitution scheme known as the "mirror" system. Pursuant to the mirror system, the words "Virgin Islands" are substituted for the words "United States" wherever they appear in the mirror Code. The Code contains several sections — notably Code sections 932, 934, and 937 — that deal specifically with the USVI and, more particularly, govern the extent to which the USVI can grant tax incentives and how USVI residents and persons with USVI income file their income tax returns.

### **Overview of the Research and Technology Park Program**

The rapidly growing RTPark is one of several tax benefits programs the USVI offers investors. The RTPark seeks to support the USVI's expanding technology sector in order to promote the growth, development, and diversification of the USVI economy. In addition, the RTPark works to broaden the capabilities of UVI by providing the university with financial support and training



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opportunities for UVI students, and by creating a supportive research environment that combines the resources of UVI with those of the public sector and private industry. The RTPark program is ideal for applicants engaged in health fields, energy and research development, marine science, sustainability, and other areas requiring significant technological resources. By way of illustration, RTPark beneficiaries currently operate in the areas of data analytics, web content development, interactive media management, ecommerce, software development and licensing, technology-based management services, internet advertising, telecommunications and information technology, and application development.

Oversight of the RTPark Program is vested in the seven-member RTPark Board of Directors ("Board") which by statute includes the Chairman of the UVI Board of Trustees and the President of UVI, Dr. David Hall. The Board is vested with authority to review and approve or disapprove applications by potential beneficiaries, referred to under the Program as "Protected Cells."

Typically, an applicant, through its legal representative, negotiates the terms of the applicant's tenancy with the RTPark's Executive Director, Mr. Peter Chapman. Negotiations include the amount of the entry fee paid by the applicant, the applicant's obligation to pay annual management fees to the RTPark, the structuring of a charitable donation to UVI, and the percentage of equity interest to be awarded to the RTPark.<sup>1</sup> The payments are typically based on the size of the applicant and its projected financial revenues.

Once negotiations have been finalised, a term sheet is entered into between the applicant and the RTPark and this provides the basis for the formal application that covers the applicant and its owners. After the application is submitted, the RTPark conducts

due diligence. The final terms are ultimately memorialised in the Protected Cell's Park Tenant Agreement, which is executed by representatives of both the applicant and the RTPark and serves as the operative document defining the relationship among the Protected Cell and the RTPark. Each RTPark application requires a \$2,500 application fee and a \$4,000 background check fee that covers two individuals.

Benefits under the RTPark Program are initially available for 15 years and can be renewed for an initial renewal period of 10 years, followed by subsequent renewal periods of five years subject to Board approval.

### **Tax Benefits Granted to RTPark Businesses**

The RTPark offers numerous tax exemptions and reductions, the most notable of which is a 90% reduction on tax liability for the business and also for direct and indirect owners of beneficiaries if the owners are bona fide residents of the USVI.<sup>2</sup>

### **Income Tax Benefit**

A Protected Cell in the RTPark receives a 90% tax credit against its income tax liability on income from the business for which benefits are granted. Such income must be effectively connected with the conduct of a USVI trade or business under sections 934(b)(1) and 937 of the Internal Revenue Code of 1986, as amended. For a corporate Protected Cell, the reduction results in an effective tax rate of approximately 2.31% on eligible income. If the beneficiary's owners are individually residents of the USVI, they receive the reduction on their dividends or allocations. Salaries, however, are fully taxable.



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#### **Withholding Tax Benefit**

There is no withholding tax on payments to U.S. corporations or U.S. individual residents. Further, RTPark beneficiaries with foreign owners are exempt from withholding tax on interest payments and enjoy a reduced withholding rate of 4.4% on dividend payments overseas. This includes the 10% surcharge on corporations. In addition, the tax rates on royalties paid to nonresident individuals or foreign corporations are 4 and 4.4% respectively. The withholding tax should be paid by the withholding agent (typically the RTPark beneficiary) to the Virgin Islands Bureau of Internal Revenue (“BIR”) on Form 8109 and then reconciled annually on Form 1042.

#### **Gross Receipts Tax Benefit**

Beneficiaries receive an exemption from the USVI gross receipts tax, which is otherwise imposed at a five percent rate on the gross receipts of a business, with no deductions. If a USVI entity is engaged in business activities that are not covered by its grant of RTPark benefits, then it would be required to pay gross receipts tax on the gross receipts from such business activities. Moreover, the BIR requires that each beneficiary report its gross receipts (monthly, assuming annual gross receipts of more than \$225,000) on Form 720 V.I., then indicate that the beneficiary is exempt from payment of the tax pursuant to its status as an RTPark beneficiary.

#### **Excise Tax Benefit**

Beneficiaries receive an exemption from USVI excise tax on building materials and machinery used in the construction of their facilities and on raw materials brought into the USVI to produce articles. Otherwise, a tax ranging from two to 25% applies to the fair market value of many items. In addition, several statutory exemptions from excise tax apply regardless of beneficiary status.

#### **Property Tax Benefit**

Beneficiaries receive an exemption from the USVI property tax. However, the personal homes of beneficiaries do not receive the property tax exemption, even if the respective owners maintain home offices. Moreover, if a beneficiary rents an office, the property tax exemption does not pass through to its landlord.

#### **Customs Duties Benefit**

Because the USVI is outside the U.S. customs zone, it has enacted its own customs law, imposing a six percent duty on items that are not manufactured in the United States. An RTPark beneficiary’s customs duties are reduced from six to one percent on raw materials and component parts imported from outside the USVI. Materials made in the United States are exempt from any customs duty. As with the excise tax, several statutory exemptions from customs duties apply regardless of beneficiary status.

In conclusion, the RTPark has created a hub of creativity in the USVI that enables entrepreneurs with new and established businesses to connect, collaborate, and innovate while enjoying tax incentives under the protection of the U.S. flag.

*1. The Protected Cell is required by statute to provide the RTPark with an equity interest. Most applicants elect to issue a non-voting interest equal to 1 percent with no entitlement to distributions.*

*2. We can provide guidance on the requirements for obtaining and maintaining bona fide residency, but a detailed discussion of these requirements is beyond the scope of this article.*



Marjorie Roberts is in private practice in St. Thomas, U.S. Virgin Islands. She heads a firm that specializes in tax, corporate/securities, and business law.

Ms. Roberts attended the University of Geneva, Switzerland, and graduated from Smith College Magna Cum Laude with High Honors in History (B.A. 1977), where she was admitted to Phi Beta Kappa. She holds law degrees from Harvard University (J.D. 1980), Cambridge University (LL.B. 1981), and New York University (LL.M. (executive) in Tax 2016). Ms. Roberts was previously in private practice in London and Washington, DC with the law firm of Gibson, Dunn & Crutcher, served as an attorney-advisor in the U.S. Treasury Department’s Office of Tax Policy, was Chief Counsel to the Virgin Islands Bureau of Internal Revenue, and was General Counsel and Vice President for Globalvest Management Company, a St. Thomas-based investment company.

Ms. Roberts is admitted to practice law in California, Washington, D.C. (inactive), the U.S. Virgin Islands, and before the Third Circuit Court of Appeals and the U.S. Tax Court and is licensed as a solicitor in England and Wales and the British Virgin Islands. Her firm is rated AV by Martindale-Hubbell and Ms. Roberts is one of four “Band 1” attorneys in the Virgin Islands as ranked by Chambers and Partners.

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